IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 5 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJENDRAPRASAD NARENDRAPRASAD PANDEY - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

==========

Appearance :
MR YN OZA SR. COUNSEL FOR IH SYED for Applicant(s) : 1,
MR AY KOGJE APP for Respondent(s) : 1,
MR MR ND NANAVAI SR. COUNSEL FOR MR HARIN P RAVAL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

DATE :19/04/2006

CAV JUDGMENT

1. The petitioner by way of filing this petition under Article 226/227 of the Constitution of India has prayed to issue appropriate writ,order or direction to quash and set aside the arrest warrant issued against the petitioner under Section 70 of the Code of Criminal Procedure, 1973(hereinafter referred to as “Cr. P.C.”) by the learned Judicial Magistrate, First Class, Nadiad, in

the offence registered as I – CR No. 4/2005 at Chaklasi Police Station, Dist. Kheda.

2. The facts disclosed from the record of the case are as under :

i. On 8-1-2005 a complaint was lodged by Swami Dharmapriydasji of Vadtal Swaminarayan Temple before Chaklasi Police Station against five persons for alleged commission of the offences punishable u/s 153A, 153B, 294, 295A, 120B of the I.P. Code and u/s 5A, 5B and 9 of the Immoral Traffic(Prevention) Act, 1956 alleging that “Sadhus” of Swaminarayan Temple and Gurukul by their illicit sexual acts have defamed the whole religion and exploited women by videographing sexual acts. On the basis of this complaint offence was registered as I CR No. 4/2005 by Chaklasi Police Station against the persons named therein. Another complaint was lodged before D.C.B. Police Station, Ahmedabad which was registered as I CR No. 5/2005 for the offences punishable u/ss 292, 294, 295, 420 of I.P. Code as well as u/ss 5 and 9 of the Immoral Traffic (Prevention) Act, 1956. The complaint lodged by Swami Dharmaprasaddas was investigated and some of the

accused were arrested. The petitioner has averred that with reference to the complaint lodged with D.C.B. Police Station, Ahmedabad charge-sheet was filed against the arrested persons and the petitioner. As the petitioner was not available and absconding the Investigating Officer made an application before the learned Judicial Magistrate, First class, at Nadiad to issue non-bailable warrant against the petitioner. The learned Magistrate issued arrest warrant u/s 70 of the Cr. P. C. against the petitioner. It is the case of the petitioner that some of the “Sadhus” of Swaminarayan Sect have hatched a criminal conspiracy to rope the petitioner in criminal matters by implicating him in false cases. The petitioner is not named in any of the complaints. When the present complaint was filed, the petitioner was busy in pursuing civil matters from 10-1-2005 in the Hon'ble Supreme Court. The petitioner was present before this Court in the proceeding of Misc. Criminal Application No. 223 of 2005. Therefore, non-bailable warrant could not have been issued on the ground that he was absconding.

ii.It is further averred that when the petitioner was in

Thane he was granted transit bail to enable him to approach the competent court at Nadiad for obtaining anticipatory bail u/s 438 of the Cri. P. C. A copy of the said order was served to the police station at Nadiad on 3-10-2005. But the police intentionally neither arrested the petitioner nor called him for interrogation in respect of this complaint. The petitioner has averred that the transfer of investigation to Nadiad Police Station is without jurisdiction and therefore neither Nadiad Police could have applied for non-bailable warrant nor the learned Magistrate could have issued the same. The petitioner filed an anticipatory bail application before Nadiad Court but the same was rejected. Thereafter, the petitioner approached this Court for anticipatory bail but the same was withdrawn on 29-12-2005 with liberty to file fresh application. The petitioner has remained present before various courts through his counsel while pursuing legal remedies. Therefore, the petitioner was very much available and there was no reason for the police to ask for arrest warrant against the petitioner. The learned Magistrate was not justified in issuing non-bailable warrant on the basis that the petitioner was absconding.

iii.It is further averred that Mr.K.H.Savani, P.I., L.C.B., Nadiad Police Station wrote a letter to the Chairman of Shree Swaminarayan temple, Vadtal informing that the petitioner is one of the main accused and yet to be arrested. This conduct shows the intention of investigating agency that prior to filing of the charge-sheet the Chairman of the temple was informed about the development in investigation which is normally not revealed by the investigating agency.

iv.According to the petitioner the non-bailable warrant has been obtained by the Investigating Agency to cause damage to the public image of the petitioner and to harass him. The learned Magistrate has passed the impugned order without proper application of mind and therefore the order of issuance of non-bailable warrant against the petitioner should be set aside.

3. K.S.Savani, P.I., L.C.B., Nadiad has filed affidavit-in-reply opposing admission of the petition denying the averments made in the petition, inter-alia, contending that during the course of investigation the statement of witnesses as well as co-accused were

recorded which reveal that the petitioner has played active role in the commission of offences. It is alleged that the investigation is still going on and the Investigating Officer made several attempts but the petitioner has evaded arrest and therefore, as the petitioner was not available, the Investigating Officer made request to the learned Magistrate for issuance of arrest warrant u/s 70 of the Cr. P.C. It is averred that the learned Magistrate after going through the record of the investigation passed the impugned order issuing the arrest warrant.

4. The petitioner has also filed a similar petition challenging the order of issuance of non-bailable warrant issued by learned Metropolitan Magistrate, Ahmedabad in the offence registered as I-C.R. No.5/2005 by D.C.B. Police Station, Ahmedabad. As both the petitions involve common question of law and as the facts are similar, both the matters were heard together.

5. With the consent of learned counsels for the parties, the matter is finally heard. I have heard Mr. Yatin Oza, learned Sr. Counsel for Mr. Syed for the petitioner , Mr. Nanavati, Sr. Counsel and Mr. Harin P.

Raval for the original complainant as well as learned A.P.P. Mr. Kogje for the respondent – State at length on different days.

6. Learned Sr. Counsel Mr. Oza appearing for Mr. Syed learned advocate for the petitioner submitted that the petitioner is not named in the F.I.R and no charges are levelled against him. Even after obtaining the transit bail and serving the order to the concerned authority, the petitioner was not interrogated. This conduct of the Investigating Agency indicates that the investigation is being conducted with a view to harass the petitioner. He also submitted that the petitioner never absconded and had pursued the legal remedies through his counsel in various courts and in one of the courts, the petitioner himself had remained present, however, the investigating agency did not arrest the petitioner. He further submitted that the learned Magistrate has not applied his mind before passing the impugned order and has not exercised the power properly. He submitted that the arrest warrant cannot be issued in aid of the investigation and no undated arrest warrant can be issued. Therefore, the impugned order requires to be quashed and set aside. It is also submitted by the

learned Sr. Counsel for the petitioner that the learned Magistrate has erred in straight way issuing the arrest warrant u/s 70 of the Cr. P. C. as no summons u/s 160 of the Cr. P. C. was issued against the petitioner. Therefore, the impugned order is required to be set aside. In support of his submissions learned Sr. Counsel Mr. Oza has relied on numerous decisions.

7. Mr. Syed learned advocate for the petitioner was also permitted to make submissions on the question of facts of the case.

8. Mr. A.Y. Kogje, learned A.P.P. for the respondent – State submitted that as the alternative remedy is available to the petitioner, the writ petition under Article 226/227 of the Constitution of India would not lie and therefore the present petition should be dismissed. He also submitted that the Learned Magistrate after satisfying himself has passed the impugned order issuing the arrest warrant against the petitioner u/s 70 of the Cr. P. C. as the petitioner was not available. He also submitted that summons u/s 160 of the Cr. P. C. is not required to be served to an accused before issuance of arrest warrant u/s 70 of the Cr. P.

C. The police has power to arrest any accused – person u/s 41 of Cri. P. C. and therefore, no error is committed by the learned Magistrate in passing the impugned order. He has relied on the decision in the case of State through C.B.I. Vs. Dagwood Ibrahim Kaspar and others, reported in AIR 1997 SC 2494.

9. It transpires from the averments made in the petition that the petition involves highly disputed questions of facts, such as whether the petitioner was absconding or not and whether the petitioner was available for interrogation or not? Such disputed questions of fact cannot be gone into in the petition filed under Articles 226 and 227 of the Constitution of India. Moreover, an alternative and efficacious alternative remedy is available to the petitioner under Cr. P. C. ire. to approach the trial Court which has issued the non-bailable warrant and to pray for cancellation of the non-bailable warrant issued against him. Another alternative and efficacious remedy is also available to the petitioner to challenge the order of issuance of non-bailable warrant by way of filing revision. As the alternative and efficacious remedy is available to the petitioner under Cr. P. C. this petition

cannot be entertained and the same is liable to be dismissed.

10. It can be seen from the record of the case that impugned order is passed by the learned Magistrate on 23.8.2005 and this petition is filed on 3rd January 2006 ire. after almost about four months. It is well settled that power of High Court to issue an appropriate writ under Article 226/227 of the Constitution of India is discretionary and it cannot be claimed as a right. If the relief claimed is relating to the enforcement or protection of fundamental right, the Court has to grant it when infringement of such right is established, but, if the relief is claimed for any other purpose, it is discretionary tog-rant or to refuse such relief. Delay is one of the grounds for refusing the discretionary relief under Article 226/277 of the Constitution of India. If the petitioner wants to invoke the extra ordinary remedy, he should have come to the Court at the earliest opportunity. Delay in resorting to such remedy will be a good ground for refusing to exercise the discretion. The petitioner has not given any explanation with regard to the delay. Therefore, on the ground of delay itself, the petitioner is not entitled to

discretionary relief under Article 226/227 of the Constitution of India.

11. Mr. Oza, learned Sr. Counsel submitted that the arrest warrant in Form No. 12 of Schedule-II of the Cr. P. C. was issued which can be issued against a person who is “charged with the offence” and as “the charge is not framed” against the petitioner, no arrest warrant could have been issued u/s 70 of the Cr. P.C. However, subsequently he made a statement at the Bar that he does not press this contention. In view of his statement, this submission is not required to be considered.

12. It is submitted that the petitioner was not served with the summons u/s 160 of Cr. P. C. and called upon to appear before the Police Officer as required u/s 160 of Cr. P. C. and as charge-sheet is not filed warrant u/s 70 of Cr. P. C. could not have been issued. This submission has also no substance.

13. Section 160 of Cr. P. C. confers powers upon the police Officer who requires attendance of the person before him who appears to be acquainted with the facts and circumstances of the case. Therefore, Section 160 of

Cr. P.C. refers the attendance of the witnesses. In the present case, the petitioner is not a witness but is an accused. Even the averments made in the application disclose that he is an accused and not a witness. During the course of investigation the statement of the accused may be recorded and such statement cannot be equated with the statement of the witness acquainted with the facts and circumstances of the case.

14. It is not the case of the petitioner that he is acquainted with the facts and circumstances of the case and hence he should be treated as a witness and not an accused. Therefore, looking to the facts of the case, the provision of Section 160 of Cristen. are not applicable to the present case. The scheme envisaged by Cristen. is that in the circumstances enumerated in Sec.41 of the Code a Police Officer has power to arrest a person without warrant. However, in other cases during investigation if it transpires that an accused is keeping away or is absconding and that his presence cannot be secured otherwise then by executing a warrant issued by a competent court, the Police Officer has to obtain order from the competent court. Sufficient guidelines have been laid down in the Code as to in which circumstances the

Court shall issue a warrant of arrest of a person who is absconding or keeping away and not co-operating in investigation. Process to compel appearance contemplated by Chapter-VI of the Code can be resorted to by the Police Officer concerned even if charge sheet is not filed. In this case, charge-sheet is not filed. It is averred that identical complaints have been filed with reference to the same incident. A charge-sheet is filed in the offence registered as I-C.R. No.5/2005 by D.C.B. Police Station, Ahmedabad. If it transpires that the charge-sheet which is filed with regard to I-CR No. 5/2005 has served the purpose another charge-sheet with regard to this offence may not be filed, if Investigating Officer comes to the conclusion that commission of offence other than the offences mentioned in I-C.R. No.5/2005 is not disclosed. Therefore, this argument can not be accepted.

15. It is also a submission of the learned Sr. Counsel for the petitioner that the petitioner is not named in the compliant on the basis of which the offence is registered as I. CR No.4 of 2005 with Chaklasi Police Station and therefore warrant u/s 70 of the Cr. P.C. could not have been issued against the petitioner. It is

not necessary in all the cases that the person who is not named in the F.I.R. or complaint cannot be prosecuted. Purpose of the investigation is to find out whether person/s named in the F.I.R. as well as others named has/have committed offences mentioned in the complaint/F.I.R.. If during the course of investigation the investigating agency finds that over and above the person named in the complaint, the other persons are involved in the commission of the offence, Police has authority and power to proceed against the person/s who is/are not named in the complaint/F.I.R. Therefore, even if the petitioner is not named in the F.I.R./complaint if the material is found against him during the investigation he could be prosecuted for the commission of the offence. Therefore, the submission that the petitioner is not named in the F.I.R./compliant and therefore no warrant could be issued against the petitioner, cannot be accepted.

16. Another point urged by the learned Sr. Counsel Ozarks is that the petitioner was not absconding, but he was always available for interrogation and ready to cooperate with the investigating agency and therefore no non-bailable warrant could be issued against the

petitioner. The petitioner has failed to satisfy this Court that after obtaining transit bail from Thane Court he had presented himself before the Police and had extended all cooperation to the the investigating agency. It is significant to note that the petitioner was aware about the fact that the complaint being CR No. I – 4 of 2005 was registered against him and his presence was required in connection with the said offence. However, after obtaining the transit bail the petitioner never presented himself before the Police Officer for interrogation. Normally, non-bailable warrant would be issued by the Court after being satisfied that the accused – person against whom non-bailable warrant is issued, is absconding. Therefore, this submission has no force and hence cannot be accepted.

17. The petitioner has attempted to show that he was not absconding and was always available to the police for interrogation. As observed earlier, the question whether the applicant was absconding or available for interrogation is highly disputed question of fact. Such question of fact cannot be gone into in the petition filed under Articles 226 and 227 of the Constitution of India and therefore no relief can be granted to the

petitioner on the basis that he was not absconding and was available for interrogation and therefore no non-bailable warrant could be issued. Mr. Oza, learned Sr. Counsel for the petitioner placed reliance on the unreported judgment dated 2-12-2004 delivered by this Court (Coram : C.K. Buch, J.) in Cri. Misc. Application No. 8912 of 2004 filed u/s 482 of the Code of Criminal Procedure. Natvarlal Prabhudas Patel i.e. applicant of that application had filed the application for quashing the proceedings u/s 482 of the Code of Criminal Procedure, 1973. The said decision is relied upon with a view to bring home the point that if an accused – person has remained present before the Court in various proceedings he may not be termed as an absconding accused. On going through the said decision, it appears that the said application was filed for quashing the charge sheet filed against the applicant. One of the grounds urged by the learned A.P.P. in the said proceedings was that the accused was absconding and therefore quashing application should not be entertained. It was the case of the applicant that he remained present before the courts in various proceedings and therefore he could not have been termed as an absconding accused. While deciding the point whether

the accused was absconding. the learned Single Judge held that in order to victimize and to settle the score it was mentioned in the charge sheet that the applicant was absconding.

18. In the present case, the petitioner has failed to establish that the prosecution launched against him is mala fide. It is also stated by the learned A.P.P. that the petitioner had filed a petition for quashing the complaint but he had withdrawn the same with liberty to file a fresh petition. However, till the date, no such petition has been filed. In view of this fact, the aforesaid decision of this Court (Coram : C.K. Buch, J.) relied upon by the learned Sr. Counsel for the petitioner is not applicable in the present case.

19. As observed earlier, whether the accused person is absconding or not is a complex question of fact and such question of fact has to be determined on the basis of the facts laid and the evidence adduced before the Court. Merely because, on the facts of the case of Cri.M.A. No.8912 of 2004 the learned Single Judge has taken a view that the applicant was not absconding, in the present case it cannot be held that the petitioner was not

absconding. Therefore, the petitioner has failed to make out a case that he was not absconding and was always available for interrogation.

20. It is also submitted by the learned Sr. Counsel advocate for the petitioner that the learned Magistrate has without application of mind and without going through the record of the case and without assigning reasons mechanically passed the impugned order. It is submitted that no undated non-bailable warrant could have been issued and therefore, the impugned order is liable to be quashed and set aside. He has relied on the following decisions.

i. In the case of State of Gujarat Vs. Charulata B. Patel and others, delivered in Civil application No. 9161 of 2003 in Letters Patent Appeal NO.1342 of 2003.

ii. In the case of Ghanchi Rubina Salimbhai Vs. Metubha Diwansingh Solanki and others, reported in 2003 AIR SCW 3782.

iii. Shri R.M. Soalnki Vs. State of Gujarat in Criminal Revision application No. 129 of 2006 (Coram

Akshay H. Mehta, J.)

iv. G. Sagar Shri Vs. State and another reported in 2004 Cr.L.J. 212.

21. On perusal of the impugned order, it transpires that the learned Magistrate has considered the facts and circumstances of the case and the material on record and then passed the impugned order. From the record of the case it is clear that a detailed application was submitted by the Police Officer praying to issue warrant u/s 70 of the Cr. P.C. The reasons why issuance of warrant was claimed were mentioned therein. The learned Magistrate has after considering the contents of the application has passed the order. It was not necessary for the learned Magistrate to reiterate and restate the reasons mentioned by the police officer in the application while passing the impugned order. Reproduction of reasons in the application in the order would have been duplication which is avoided by the learned Magistrate. The law does not expect the learned Magistrate to reiterate and restate the reasons given in the application while passing the order. Therefore, the plea raised by the petitioner cannot be accepted and is

hereby rejected.

22. In my view, the decisions relied on are not applicable to the facts of the present case. In all these judgments the courts have held that the court is required to assign reasons while reaching to a conclusion. As discussed earlier, the learned Magistrate has in his order assigned the reasons for passing the order. The learned Magistrate has assigned reasons before reaching to the conclusion. Therefore, it cannot be said that the reasons are not assigned by the learned Magistrate while passing the impugned order and therefore the order is without application of mind. Furthermore, this is a warrant issued u/s 70 of the Cr. P.C. and not proclamation u/s 82 of the Cr. P.C. where the date has to be mentioned. Therefore, contention that the date before which the petitioner is to be arrested is not mentioned in the warrant u/s 70 of the Cr. P.C. and therefore it should be set aside cannot be accepted.

23. Mr. Oza, learned Sr. Counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in the case of **State through C.B.I. Vs. Dawood Ibrahim**

Kaskar and others, reported in AIR 1997 Supreme Court 2494 and contended that the learned Magistrate in his order has observed that warrant is issued because otherwise the investigation would suffer. He submitted that it is clear that the warrant u/s 70 of the Cr. P.C. is issued by the leaned Magistrate solely for the purpose of production of the petitioner before the police in aid of the investigation and therefore the non-bailable warrant issued against the petitioner should be quashed and set aside.

24. Such submission made by the Sr. Counsel on behalf of the petitioner is misplaced. In the decision, after examining the scheme of Sections 73, 167 and 309 (2)of the Cr. P. C. the Hon'ble Supreme Court has explained that Section 70 of the Cr. P. C. is of general application and in the course of investigation the Court can issue warrant in exercise of the power therein to apprehend the person who is accused of a non-bailable offence and is evading arrest. The record does not show that the non-bailable warrant has been sought and issued against the petitioner for his production before the police in aid of the investigation. The application moved by the investigating agency does not indicate that

the presence of the petitioner is required for interrogation.

25. Gujarati word used by the learned Magistrate in his impugned order is “Anveshan” The meaning of the said word given in Gujarati Dictionary “The Modern Gujarati-English Dictionary” Republished by Director of Languages, Gujarat State, 2nd Edition, 1989” is “The act of searching”. The application given by the investigating agency indicates that the petitioner was not available and therefore, non-bailable warrant for search of the petitioner was issued by the learned Magistrate. Therefore, interpretation and meaning of Gujarati word “Anveshan” as made by the learned Sr. counsel for the petitioner is not proper and correct. The record of the case does not show that the non-bailable warrant has been issued against the petitioner for production before the police in aid of investigation. After the non-bailable warrant is executed the competent court may either release the petitioner on bail or authorize his detention in custody. Under Section 167 of Cr. P.C. if the investigating agency makes prayer for police custody of the petitioner, the same will have to be considered in accordance with the principles laid down by the Hon'ble Supreme Court. However, it is incorrect and wrong to contend that the learned

Magistrate has issued the non-bailable warrant solely for production of the petitioner before the police in aid of the investigation. Therefore, the non-bailable warrant issued by the learned Magistrate against the petitioner is not liable to be quashed and set aside. Therefore, the said decision cannot be made applicable to the facts of this case.

26. Learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, reported in AIR 1982 SC 1249** and contended that there is no mention in the impugned order as to which material the learned Magistrate has perused while passing the impugned order. In my view the learned Magistrate has assigned reasons and hence it can be presumed that he has perused the relevant record for the purpose of passing the impugned order and therefore it cannot be said that the order was passed without going through the record. In the judgment the Hon'ble Supreme Court has observed that **“if the Judges say in their judgment that something was done, said or admitted before them, that has to be last word on the subject. The principle is well-settled that statements of fact as to what**

transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence." In view of these observations of the Hon'ble Supreme Court, the petitioner cannot be permitted to say that the impugned order was passed by the learned Magistrate without going through the material produced before him.

27. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Chander Kuer and others Vs. Emperor reported in A.I.R. 1941 Patna 206** in respect of the power of the Court to issue warrant of arrest, wherein the Hon'ble Supreme Court has held that **"Issue of warrant of arrest under S.90 (b) depends on due service of summons".** Looking to the facts and circumstances of the case, this decision is not applicable in the present case. In the decision of **Ahmed Ali V. State of Assam and others reported in 1990 Cri.L.J. 1041,** the same issue with regard to issuance of warrant in place of summons was involved. In my opinion, this decision is also not applicable in the facts of the present case.

28. Learned Sr. Counsel for the petitioner has also relied on the decision of this Court in the case of **P.K. Das Gupta and Ors Vs. Jaysukhlal Mahashanker & Anr, reported in 1983(2) G.L.R. 941,** wherein this Court has held that **"the Trial Court should use its discretion before exercising its powers of issuing warrants u/s 70 of the Code."** In my view, this decision is also not applicable in the facts and circumstances of the case as the learned Magistrate has exercised the discretion and has assigned reasons in the impugned order.

29. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Union of India Vs. Hansoli Devi and Others reported in (2002) 7 Supreme Court Cases 273** on the point of interpretation and binding nature of a decision.

30. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the case of **Jayendra Saraswathi Swamigal Vs. State of T.N. Reported in (2005) 2 Supreme Court Cases 13.** This decision is with regard to grant of bail in case of non-bailable offences. In my view, in the present case, this is not the stage to evaluate and consider evidence of acts and statements

made by one of the conspirators in furtherance of the common object. Therefore, this decision of the Supreme Court is not applicable to the facts of the present case.

31. Learned Sr. Counsel for the petitioner has relied on the decision of the Supreme Court in the cases of **T.T. Antony V. State of Kerala and Ors, reported in AIR 2001 Supreme Court 2637.** This decision is with regard to filing of the F.I.R. In this decision, the Supreme Court has held that **"There can be no second F.I.R. in respect of the same cognizable offence, same incident or occurrence."** In my view, this aspect cannot be considered in these proceedings and therefore, this judgment is not applicable in the present case.

32. Learned Sr. Counsel for the petitioner has relied on the decision of this Court **(Coram : A.L.Dave,J.) rendered in Criminal Revision Application No. 414 of 2002 on 22-10-2002.** In my opinion, this judgment is also not applicable in the facts of the present case.

33. Learned Sr. Counsel for the petitioner also relied on the judgment of the Hon'ble Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and others, reported**

in (2003) 6 Supreme Court Cases 675 and contended that the revision is not maintainable. This decision is in respect of Section 115 of the C.P.C. and jurisdiction of High Court under Article 226 and 227 after amendment in Civil Procedure Code. In my view, the said judgment is also not applicable in the present case as the petitioner has a right to challenge the order in revision under the provisions of Cr.P.C.

34. Learned Sr. Counsel for the petitioner also relied on the judgment of this Court (Coram : Akshay H. Mehta, J.) rendered on 3-3-2006 in Criminal Revision application No. 129 of 2006 whereby the learned Single Judge has quashed the order issuing the non-bailable warrant u/s 70 of the Cr. P. C. on the ground that the order does not contain reasons. As observed earlier, in this case, the learned Magistrate has assigned reasons in the impugned order, therefore, the said decision cannot be made applicable to the facts of this case. It is also necessary, at this stage to observe that the said order was quashed in a revision application filed by the accused challenging the order of issuance of non-bailable warrant. Therefore, also the impugned order cannot be quashed in this proceeding.

35. Learned Sr. Counsel Mr. Nanavati for the complainant has relied on the decision of the Supreme Court in the case of Jagirsinh V/s. Ranbir Singh and another (AIR 1979 SC 381) wherein the Court held that the object of Sec.397(3) is to prevent multiple exercise of revisional powers. In this case, the petitioner has not approached Sessions Court challenging the impugned order. Therefore, the judgment is not applicable to the facts of this case.

36. Mr. Nanavati has also relied on the decision of Madhu Limaye V/s. State of Maharashtra (AIR 1978 SC 47) on the same point of manintainability of revision application. In my view, this decision is also not applicable to the facts of this case. He has also relied on the decision of Ganesh Narayan Hegde V/s. S. Banarappa and others (1996(1) GCD 310(SC), on the point of inherent powers of High Court U/s 482 of Cr.P.C. But this decision is also not applicable in the facts of this case.

37. As regards the contention that Mr.K.A.Savani, P.I., L.C.B., Nadiad Police Station wrote a letter to Chairman of Shree Swaminarayan temple, Vadtal informing about the developments in the investigation, the petitioner has

not produced the letter on record of this case. The copy of the letter annexed with the compilation indicates that it is not written by Mr. Savani as alleged. Therefore, the contention that the investigation is being carried out with specific intention cannot be accepted.

38. It is significant to note that the petitioner had earlier filed a petition u/s 482 of the Cr. P.C. making a prayer to quash the complaint but the same is withdrawn with a liberty to file fresh application in view of alleged new developments in the case but no such petition is filed. It appears that the petitioner is trying to avoid arrest by abusing process of law.

39. In view of the above discussion, the petitioner has failed to make out case for quashing and setting aside the impugned order. Therefore, this petition fails and is accordingly dismissed. Rule stands discharged.

(BANKIM N. MEHTA,J.)

/JVSatwara